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September 24, 1996

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
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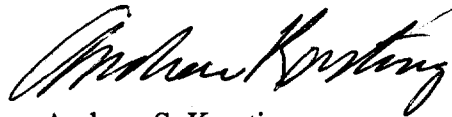
Re: Station KYEG(FM), Canadian, Texas
MM Docket No. 96-92

Dear Mr. Caton:

Transmitted herewith on behalf of AJI Broadcasting, Inc., licensee of Station KYEG(FM), Canadian, Texas, are an original and six (6) copies of its Proposed Findings of Fact and Conclusions of Law in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,



Andrew S. Kersting
Counsel for AJI Broadcasting, Inc.

Enclosures

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BEFORE THE

Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	MM Docket No. 96-92
)	
AJI BROADCASTING, INC.)	
)	
Order to Show Cause Why the)	
License for Station KYEG(FM),)	
Canadian, Texas, Should Not)	
Be Revoked)	

To: Administrative Law Judge Edward Luton

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF AJI BROADCASTING, INC.

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September 24, 1996

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SUMMARY

A. Jack Inman ("Inman"), AJI Broadcasting, Inc.'s ("AJI") sole officer, director, and stockholder, has secured the necessary financing and engineering services to properly reconstruct Station KYEG(FM), Canadian, Texas, and return the station to on-air operation. In addition, Inman has (i) made a \$7,000 deposit on a new transmitter for the station; (ii) secured office space in Canadian; and (iii) hired an operations manager. Inman planned to travel to Canadian during the week immediately following the August 14, 1996, hearing session with his engineer and operations manager to locate studio space and begin installing the station's equipment. He also intended to forward the remaining balance owed on the station's transmitter and have it shipped to him. Thus, because AJI has undertaken extensive efforts and expended substantial resources in attempting to return Station KYEG(FM) to on-air operation, and is in the process of taking all of the necessary steps to resume broadcast operations, the record establishes that AJI has the capability and intent to resume broadcast operations expeditiously.

The record also establishes that AJI did not violate Section 73.1750 of the Commission's rules because it was not responsible for discontinuing the operation of Station KYEG(FM), and, as noted above, has acted diligently by making substantial and repeated efforts to return the station to on-air operation.

AJI has violated Section 73.1740 of the rules on two separate occasions by remaining off the air without silence authority for four months, and six and one-half months, respectively. Nevertheless, these rule violations were inadvertent, of relatively short duration, and do not reflect a deliberate flouting of the Commission's rules. Moreover, they are mitigated by AJI's extensive and continued efforts to return the station to on-air operation, as well as the actions of the licensee's

former FCC counsel. Therefore, because AJI's transgressions of Section 73.1740 of rules do not adversely affect the licensee's basic qualifications, they should not result in revocation of the Station KYEG(FM) license.

For these reasons, the issues designated against AJI in the Order to Show Cause and Hearing Designation Order, DA 96-584 (released April 16, 1996), should be resolved in the licensee's favor.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of) MM Docket No. 96-92
)
AJI BROADCASTING, INC.)
)
Order to Show Cause Why the)
License for Station KYEG(FM),)
Canadian, Texas, Should Not)
Be Revoked)

To: Administrative Law Judge Edward Luton

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF AJI BROADCASTING, INC.**

Appearances

Frank R. Jazzo, Esquire and Andrew S. Kersting, Esquire on behalf of AJI Broadcasting, Inc., and Mark Berlin, Esquire and Robert Zauner, Esquire, on behalf of the Mass Media Bureau, Federal Communications Commission.

AJI Broadcasting, Inc. ("AJI") herein proffers its proposed findings of fact and conclusions of law in the above-captioned proceeding.

I. PRELIMINARY STATEMENT

1. AJI is the licensee of Station KYEG(FM), Canadian, Texas. On April 16, 1996, the Mass Media Bureau ("Bureau" or "MMB") initiated a proceeding to determine whether the license for Station KYEG(FM) should be revoked.¹ Order to Show Cause and Hearing Designation Order,

¹ The Commission's records indicate that Station KYEG(FM) (formerly KRBG) has been off the air since April 30, 1991, due to financial problems. The license for Station KYEG(FM) was granted on July 26, 1990 (BRH-900313UG), and expires on August 1, 1997. See Order to Show Cause and Hearing Designation Order, DA 96-584 ¶2, n.2 (released April 16, 1996).

DA 96-584 (released April 16, 1996) ("HDO"). The HDO specified the following issues to be determined at the hearing:

- (1) To determine whether AJI Broadcasting, Inc. has the capability and intent to expeditiously resume the broadcast operations of KRBG(FM), consistent with the Commission's Rules.
- (2) To determine whether AJI Broadcasting, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, whether AJI Broadcasting, Inc. is qualified to be and remain the licensee of KRBG(FM).

HDO at ¶3.² The burden of proceeding and the burden of proof on the above issues was placed on the Bureau. Hearing sessions were held on July 30 and August 14, 1996. The Presiding Judge set September 24, 1996, and October 8, 1996, as the dates for filing proposed findings of fact and conclusions of law, and reply findings, respectively. Order, FCC 96M-194 (released August 20, 1996).

II. PROCEDURAL HISTORY

2. On June 15, 1989, Megahype Broadcasting, Inc. ("Megahype"), filed an application (BPH-890615IF) to upgrade Station KYEG(FM) (then KEXP(FM), and later KRBG(FM)), Canadian, Texas, to a Class C1 facility pursuant to MM Docket No. 87-402. Megahype's application was granted on December 28, 1989. (Official notice requested). Megahype filed an application to extend its construction permit for the Class C1 facility on June 6, 1991 (BMPH-910606JW), which was granted on July 31, 1991. *Id.* On June 30, 1992, Megahype filed an application to assign the license for Station KYEG(FM) to Carolina Communications and extend the construction permit for

² On April 8, 1996, the Commission granted AJI's request to change the call sign of the Canadian, Texas, FM facility from KRBG(FM) to KYEG(FM). See *Public Notice*, No. 62421, (released April 12, 1996).

the Class C1 facility (BALH-920630GU; BMPH-920630JW). *Id.* Both of these applications were granted on August 31, 1992. *Id.*; MMB Ex. 1, p. 1. Carolina Communications filed an extension application to extend the construction permit for the modified facility on June 16, 1993 (BMPH-930616JB). (Official notice requested). The application was granted on August 25, 1993. *Id.* Carolina Communications filed a second extension request on February 18, 1994 (BMPH-940218JE). *Id.*

3. While its second extension application was pending, Carolina Communications filed an application on September 21, 1994 (BAPLH-940921GK), to assign the license for Station KYEG(FM) to AJI. MMB Ex. 1, p. 1. The FCC granted the assignment (and pending extension request) on December 20, 1994, subject to the following conditions: (1) the assignment would be consummated within 60 days; and (2) the station would resume normal broadcast operations within 60 days of consummation. *Id.*; HDO, ¶2; *see also* FCC Form 732 granting BAPLH-940921GK. The assignment from Carolina Communications to AJI was consummated on February 21, 1995, but the station did not resume broadcast operations within 60 days thereafter. MMB Ex. 1, p. 2; HDO, ¶2.

4. On April 20, 1995, AJI filed an application (BMPH-950420JA) requesting an extension of time to complete construction of the Class C1 facilities authorized by construction permit BPH-940921GK. (Official notice requested); *see also* MMB Ex. 1, Attach. 4, pp. 1-2; MMB Ex. 1, Attach. 3, p. 2.

5. On June 2, 1995, the Bureau sent a letter to AJI notifying the licensee that it had not complied with the condition set forth in the Commission's December 20, 1994, grant of the assignment to AJI that the station resume normal broadcast operations within 60 days of consummation. MMB Ex. 1, Attach. 2, pp. 1-2. The Bureau sent a similar letter to AJI on July 17,

1995. *Id.* at 3-4. AJI responded to the Bureau's letters on July 20, 1995, by requesting a special temporary authorization ("STA") to permit the station to remain silent while the station's Class C1 upgrade was being completed. MMB Ex. 1, Attach. 3, p. 2; *see also* AJI Ex. 1, p. 1; MMB Ex. 1, p. 2. On August 23, 1995, the Commission granted AJI an STA to remain silent through October 1, 1995, acknowledging that the delay in returning Station KYEG(FM) to broadcast operations was the result of Inman's health problems. MMB Ex. 1, Attach. 3, p. 1; MMB Ex. 1, p. 2.

6. By letter dated April 1, 1996, the Bureau denied AJI's April 20, 1995, application to extend the construction permit for KYEG(FM)'s Class C1 facility and cancelled the construction permit. MMB Ex. 1, Attach. 4, pp. 1-2. The Bureau's letter stated in part:

[The] . . . evidence before us suggests that construction has not begun on KRBG [now KYEG] and that you made no progress since your last extension Further, you do not explain why you made no progress between April 4, 1995, the day your doctor lifted your activity restrictions and June 20, 1995, the date your permit expired.

Id.

III. STATEMENT OF FACTS

7. William J. Pennington acted as AJI's FCC counsel from December 1994 through March 1996. AJI Ex. 1, p. 1. On February 24, 1995, Pennington filed a request to change the call letters of Station KRBG(FM) to KYEG(FM). AJI Ex. 1, p. 2 and Attach. 3. A. Jack Inman ("Inman"), AJI's sole officer, director, and stockholder,³ testified that he had signed all the forms and attached a check for the filing fee, but "nothing was ever done." AJI Ex. 1, p. 2; Tr. 75. Upon checking with Laura Smith at the FCC, Inman was advised that Pennington never sent in the final

³ *See* MMB Ex. 1, Attach. 4, p. 1.

paperwork necessary to complete the call sign change, even though it had been initially approved by the Commission. AJI Ex. 1, p. 2; Tr. 74. The FCC did not grant AJI's request to change the call sign of Station KRBG(FM) to KYEG(FM) until April 8, 1996.⁴ *See Public Notice*, No. 62421 (released April 12, 1996). Inman testified that the call sign change was made because "Laura Smith got it done." Tr. 75. He explained that Smith said "she would get it done, and she would force Mr. Pennington to do what he had to do" Tr. 75.

8. Upon examining the station's property following the February 21, 1995, consummation of the assignment to AJI, Inman found that all of the equipment which had previously been on the site had been removed and disposed of, and there was no equipment available to return KYEG(FM) to operation. AJI Ex. 1, p. 1.

9. Sometime prior to April, 1995, Inman suffered a heart attack and underwent heart surgery. AJI Ex. 1, p. 1 and Attach. 1. He was placed on medication and advised by his physician to refrain from stressful activities until his condition stabilized. As of April 4, 1995, Inman's condition had sufficiently improved that his doctor informed him he could resume his normal daily activities. AJI Ex. 1, Attach. 1.

10. In either June or July of 1995, Inman employed the engineering firm of RDG Custom Electronics ("RDG") to supply the equipment and perform the engineering work to construct Station KYEG(FM). AJI Ex. 1, p. 3; Tr. 85. Inman had previously purchased equipment from RDG, and had used their engineering services "numerous times" in the past. *Id.* In either late August or the

⁴ The Commission's records reflect that the reason for the delay in granting AJI's February 24, 1995, request to change the station's call letters was that Pennington failed to notify the FCC of the consummation of the assignment from Carolina Communications. *See Exhibit No. 1 hereto.*

first part of September, 1995, Inman paid RDG a cash deposit of \$7,000 for a McMartin 35 kw transmitter for Station KYEG(FM). AJI Ex. 1, p. 3; Tr. 86. Inman stated that RDG has all the necessary equipment available to construct the station, and is waiting for him to give them the go-ahead to begin construction. Tr. 86.

11. During the period between April and September, 1995, Inman attempted to find financing for the construction of KYEG(FM). He explained that he did not want to build the station on a "shoe string", but wanted to build it "properly." Tr. 87-88. As of September 14, 1995, Inman had an oral understanding with John Pittman, of Lumberton, North Carolina, that Pittman was going to provide the necessary additional funding to purchase the equipment and "properly" reconstruct Station KYEG(FM). AJI Ex. 1, p. 1; Tr. 81. Inman testified that Pittman was a broadcaster, and he and Pittman were "long-time friends." Tr. 81.

12. Inman met with Pittman on Thursday evening, September 14, 1995, and "had everything ready to go." Tr. 81. The engineers were to leave for Texas either the following Monday or Tuesday, but Pittman was killed in an automobile accident on Saturday morning, September 16, 1995. Tr. 81-82, 86-87. Inman stated that the death of Pittman "severely disrupted and hampered my financial planning for the construction of the station." AJI Ex. 1, p. 1.

13. Also in September, 1995, Inman secured financing from a gentleman in Myrtle Beach, South Carolina, who had been in the broadcast business and owned a radio station.⁵ Inman testified that he and the gentleman from South Carolina entered into a written agreement for the investor to invest in Station KYEG(FM), but it took time to put the arrangement together. AJI Ex. 1, p. 2; Tr. 87. Inman subsequently lost this source of financing, but didn't know why. Tr. 80. Inman later

⁵ Inman stated that this gentleman also owned "another big worldwide business." Tr. 87.

learned that, at the same time he was negotiating an arrangement with the South Carolina investor, Pennington was working on another deal with the same gentleman concerning a radio station in Ocracoke, North Carolina, of which Pennington was a part owner. AJI Ex. 1, p. 2; Tr. 87. The deal between Pennington and the South Carolina investor fell through when the investor learned that Pennington was mistaken in representing that the Ocracoke station could be upgraded to a Class C1 facility. Inman testified that the South Carolina investor then decided he did not want to have anything further to do with the broadcast business. *Id.*

14. Sometime around the latter part of September, 1995, after Inman had lost the South Carolina investor, Pennington told Inman he had until January 31, 1996, either to construct or sell the station.⁶ Tr. 80-81; AJI Ex. 1, p. 1. Pennington suggested to Inman that he sell Station KYEG(FM) and take a loss. AJI Ex. 1, p. 2. In January, 1996, Jim Hughes, the owner of Pampa Broadcasters, Inc. ("PBI"), in Pampa, Texas, offered to buy the station, and he and Inman entered into a purchase agreement. *Id.*; Tr. 82. Pennington was to handle the filing of the assignment application. AJI Ex. 1, p. 2. After obtaining signatures from both parties and a filing fee check from Hughes, Pennington told Inman and Hughes that he had filed the assignment application with the Commission.⁷ AJI Ex. 1, p. 2; Tr. 73. *See also* AJI Ex. 1, Attach. 2.

15. Inman testified that in February, 1996, he was contacted by several broadcasters as well as an attorney representing a Tennessee broadcaster, who asked whether he was having any problems with Pennington either not filing FCC forms in a proper manner, or refusing to supply

⁶ Inman believed that January, 1996, was the expiration date of the construction permit to modify the station to a Class C1 facility. Tr. 80-81; AJI Ex. 1, p. 1.

⁷ The filing fee check from PBI was dated January 17, 1996, and signed by Mary Hughes. AJI Ex. 1, Attach. 2.

copies of certain FCC documents. AJI Ex. 1, p. 2. Inman informed them that he was experiencing similar problems. *Id.* Brian Addington, counsel for Station WHCB, Bristol, Tennessee, advised Inman that he was filing a complaint regarding Pennington with the South Carolina Bar Association. *Id.* Inman further testified that soon thereafter Pennington moved his law practice to the Boston, Massachusetts, area, which was his fourth such move in two years. *Id.* at 1-2.

16. In March, 1996, Hughes informed Inman that the assignment application had not been filed with the FCC, and that Pennington was demanding an additional \$1,500 from PBI before he would file the application. AJI Ex. 1, p. 2; Tr. 73-74, 82. At that time, Inman realized Pennington "did not have my best interests in mind." AJI Ex. 1, p. 2.

17. After discovering that Pennington never filed the application to assign Station KYEG(FM) to PBI, Inman began searching for another investor. AJI Ex. 1, p. 3; Tr. 82. A friend of Inman's who is in the broadcast business informed him that Dain Schult, President of Texrock Radio, Inc. ("Texrock"), was interested in acquiring radio stations in Texas.⁸ *Id.*, and Attachs. 4 & 5; Tr. 82, 96. Inman contacted Schult as well as other potential investors.⁹ Tr. 82. Inman and Schult first spoke over the telephone sometime in May, 1996. Tr. 97. They had "numerous" telephone conversations before meeting in Atlanta in mid-June, 1996. Tr. 82-83, 97. Inman made it clear to Schult during these conversations that the KYEG(FM) license had been designated for hearing, and there was the possibility that AJI might lose the station. Tr. 97. Inman returned to Atlanta in July,

⁸ Schult has operated his own consulting business for several years, and has been looking for the opportunity to form his own company that will own and operate radio stations in Texas. Tr. 94-95.

⁹ One of these investors was a surgeon who lives in Dallas, Texas. Inman visited this potential investor in either June or July, 1996. Tr. 82-83.

at which time Schult agreed to finance the construction and start-up expenses for Station KYEG(FM).¹⁰ AJI Exhibit 1, p. 3 and Attach. 4; Tr. 82-83. The terms of the agreement between Texrock and AJI are as follows:

- (1) Texrock will loan AJI up to \$200,000 for the construction and initial operation of Station KYEG(FM);
- (2) The term of the loan will be for seven years with a 20-year amortization (and subsequent balloon payment at the end of the seventh year) at an interest rate not exceeding 2% above the prevailing prime lending rate; and
- (3) AJI will be required to pledge all of its assets and stock to Texrock, consistent with FCC rules and regulations, until the loan is repaid.

AJI Ex. 1, p. 3 and Attach. 5; Tr. 96.

18. Schult testified that Texrock, by itself, did not have sufficient funding to meet its commitment to AJI as of August 14, 1996. Tr. 93. However, Texrock has a financial commitment letter from RJ Financial, Incorporated ("RJ Financial"), which is its primary source of funding. Tr. 93-94. Schult met with Rob Stevens, President of RJ Financial, and negotiated an agreement which provides that RJ Financial will make a series of incremental disbursements of funds to Texrock that are to be used to acquire stations and for other related purposes. Tr. 95-96. The aggregate amount that RJ Financial is providing to Texrock is \$21,340,000, which is the amount that Schult originally proposed. Tr. 96-97. The first disbursement will be in the amount of \$500,000, and will be made sometime between August 21 and August 30, 1996. Tr. 95.

¹⁰ In a letter dated July 18, 1996, Schult stated the following:

It is [Texrock's] intent to assist you in funding the construction of KYEG-FM, commencing July 31, 1996, with the goal of having the facility completed, functional and on the air no later than October 31, 1996.

AJI Ex. 1, Attach. 4.

19. Schult also has negotiated a verbal commitment for "bridge money" that will be in the form of an additional loan of \$100,000, which is to be wired to Texrock as of Monday, August 19, 1996. Tr. 94-96. This additional loan is being provided by Dan Hodges, an investment banker, who is based in Tucson, Arizona. Tr. 96. Texrock has no other commitments that it is required to fund immediately with the \$600,000 it is to receive from RJ Financial and Hodges. Tr. 99.

20. Schult explained that the financial arrangement between Texrock and AJI is not a "one-shot proposition," but, rather, part of a long-term plan to acquire a group of stations. Tr. 96-97. Station KYEG(FM) is the only station to which Texrock will be loaning money. Tr. 96. Schult's intention is that he will have the capital available to help Inman with KYEG(FM), and, at the same time, have the necessary funds to make escrow deposits toward the purchase of other stations. Tr. 98. Schult has hands-on experience putting FM stations on the air in both Avon, Colorado, and Fort Wayne, Indiana, which he believes qualifies him to assist Inman in putting KYEG(FM) on the air. Tr. 98.

21. Inman intends to return KYEG(FM) to the air "immediately." AJI Ex. 1, p. 4. Inman testified that he plans to go to Canadian, Texas, at the beginning of the week of August 19, 1996, with his engineer and operations manager (whom he hired from Fayetteville, North Carolina) to secure studio space and begin installing equipment. Inman has already secured office space in Canadian. He then intends to call RDG, forward the remaining balance on the transmitter, and have it shipped to him. Tr. 90.

22. In response to questioning from the Presiding Judge concerning the fact AJI does not have a written agreement with RDG for constructing the station, Inman explained that he and R.D. Gauss, have worked together for some time on several different projects for stations where Inman

has worked in the past, and they have never had a written agreement. Tr. 90-91. Inman testified that he will require the work to be done on schedule. Gauss has never let him down before, but if he does not get the work done on time, Inman will hire "someone else . . . if they can't do the job." Tr. 91-92.

IV. PROPOSED CONCLUSIONS OF LAW

A. AJI Has the Capability and Intent to Expeditiously Resume the Broadcast Operations of Station KYEG(FM).

23. Station KYEG(FM) has been off the air since AJI acquired the station on February 21, 1995. Findings, ¶¶1, 3. As Inman explained, upon examining the station's property following consummation of the assignment to AJI, Inman discovered that all of the equipment which had previously been on the site had been removed and disposed of, and there was no equipment available for KYEG(FM) to resume broadcast operations. Findings, ¶8. Nevertheless, AJI has entered into an agreement with Texrock, whereby Texrock has agreed to loan AJI up to \$200,000 for the construction and start-up expenses of the station upon certain specified terms and conditions. Findings, ¶17. Although Texrock did not possess sufficient funds to meet its commitment to AJI as of August 14, 1996, Texrock has secured a financial commitment from RJ Financial in the aggregate amount of \$21,340,000. Findings, ¶18. RJ Financial will provide funding to Texrock through a series of incremental disbursements. The first disbursement is to be made sometime between August 21 and August 30, 1996, in the amount of \$500,000. Findings, ¶18.

24. Texrock also has secured a verbal commitment from Dan Hodges for an additional \$100,000 loan which was to have been wired to Texrock as of Monday, August 19, 1996. Findings, ¶19. Texrock is not loaning money to any other station, and has no commitments that it is required

to fund with the \$600,000 it receives from RJ Financial and Hodges other than Station KYEG(FM). Findings, ¶¶19-20. Moreover, Dain Schult, Texrock's President, has hands-on experience putting FM stations on the air, and intends to assist Inman in putting KYEG(FM) back on the air. Findings, ¶20.

25. As a result of securing the necessary financing, Inman intends to return Station KYEG(FM) to on-air operation "immediately." Findings, ¶21. In either June or July, 1995, Inman employed RDG to supply the equipment and perform the necessary engineering work to construct Station KYEG(FM). RDG has all the necessary equipment available and is waiting for Inman's instructions to begin construction. Findings, ¶10. Inman has worked with RDG on several different projects in the past, and the engineering firm has never let him down in terms of completing work in a timely manner. Inman made clear, however, that if RDG does not get the work done, he will not hesitate to hire another engineering firm to complete construction of Station KYEG(FM) on time. Findings, ¶¶10, 22.

26. In addition to securing financing and employing an engineering firm, Inman made a \$7,000 deposit on a transmitter in either late August or early September, 1995. Since that time, he has secured office space in Canadian, Texas, and hired an operations manager. Inman intended to travel to Canadian at the beginning of the week of August 19, 1996, with his engineer and operations manager in order to secure studio space and begin installing the station's equipment. Inman then intends to call RDG, forward the remaining balance owed on the transmitter, and have it shipped to him in Canadian. Findings, ¶¶10, 21.

27. In *Keyboard Broadcasting Communication*, 10 FCC Rcd 4489 (MMB 1995), the Bureau issued an Order to Show Cause and Hearing Designation Order, 9 FCC Rcd 101 (1993),

directing the licensee to show cause why its license should not be revoked. The FCC's records showed that the station had been off the air since September 1, 1991, and the licensee's last request for silence authority had expired on July 16, 1993. Accordingly, the Bureau specified the same issues against the licensee which are the subject of this proceeding. 10 FCC Rcd at 4489.

28. The ALJ found that the licensee had failed to properly file its notice of appearance and was not capable of expeditiously returning the station to operation. Accordingly, the ALJ terminated the hearing proceeding and certified the case to the Commission. *Id.*

29. Acting pursuant to delegated authority, the Bureau sent a letter to the licensee requesting information and documentation establishing its ability to resume broadcast operations within 90 days.¹¹ The licensee responded by sending the Bureau a letter establishing that it had (i) prepaid rent on its antenna and studio site; (ii) prepaid hazard insurance; and (iii) obtained engineering services to assist in preparing the station's equipment to resume operations. The licensee also provided documentation establishing that it had opened a bank account in which it had deposited sufficient funds to return the station to the air, and later notified the Bureau that it had resumed broadcast operations. *Id.* at 4489-90. In light of the substantial efforts and resources expended by the licensee to return the station to on-air operation, as well as its successful resumption and continuing operation of the station, the Bureau terminated the proceeding without further action. *Id.*

30. In this case, although Station KYEG(FM) has not yet resumed operation, the record establishes that AJI has the capability and intent to expeditiously resume broadcast operations. Like

¹¹ The licensee filed a petition for reconsideration of the ALJ's decision in which it requested, *inter alia*, that it be afforded 90 days in which to resume broadcast operations. The reconsideration petition was denied by the ALJ. 10 FCC Rcd at 4489.

Keyboard Broadcasting, Inman has secured the necessary financing and engineering services to return Station KYEG(FM) to broadcast operation. In addition, Inman has (i) made a \$7,000 deposit on a new transmitter for the station; (ii) secured office space in Canadian, Texas; and (iii) hired an operations manager. Findings, ¶¶10, 21. He planned to travel to Canadian during the week immediately following the August 14, 1996, hearing session with his engineer and operations manager to find studio space and begin installing the station's equipment. Findings, ¶21. He also intends to forward the remaining balance on the station's transmitter and have it shipped to him. Findings, ¶21. Therefore, because AJI has made substantial efforts and expended financial resources in attempting to return Station KYEG(FM) to broadcast operation, the record establishes that AJI has the capability and intent to resume broadcast operations expeditiously. Accordingly, issue (1) should be resolved in the licensee's favor. *Keyboard Broadcasting Communication*, 10 FCC Rcd 4489; *see also Hometown Media, Inc.*, FCC 96D-06 (ALJ, released September 17, 1996).

B. AJI Has Not Violated Section 73.1750 of the Commission's Rules.

31. The record establishes that AJI did not violate Section 73.1750 of the Commission's rules because it was not responsible for discontinuing the operation of Station KYEG(FM),¹² and has acted diligently by making substantial and repeated efforts to return the station to on-air operation.

32. Sometime between the filing of AJI's call sign request on February 24, 1995, and April, 1995, Inman suffered a heart attack and underwent heart surgery. As a result of his heart

¹² According to the Commission's records, Station KYEG(FM) has been off the air due to financial problems since April 30, 1991. Findings, ¶1.

problems, Inman was not able to resume his normal daily activities until April 4, 1995. Findings, ¶9.

33. During the period from immediately following his recovery until September, 1995, Inman attempted to find the necessary financing to return KYEG(FM) to broadcast operation. As of September 14, 1995, Inman had an oral agreement with John Pittman, a broadcaster and "long-time friend" of Inman's, that Pittman would provide the necessary funding to purchase the equipment and reconstruct KYEG(FM). Inman planned to have his engineers leave for Texas on the following Monday or Tuesday. However, Pittman was killed in an automobile accident two days later, on September 16, 1995. The unexpected death of Pittman "severely disrupted" Inman's financial plans for constructing Station KYEG(FM). Findings, ¶¶11-12.

34. Shortly after Pittman's death, Inman entered into a written agreement with a South Carolina broadcaster who agreed to provide funds to assist Station KYEG(FM) in getting back on the air. However, unbeknownst to Inman, Pennington, who then served as AJI's FCC counsel, was attempting to get the same gentleman to invest in another radio station in Ocracoke, North Carolina, of which Pennington was a part owner. When the gentleman from South Carolina discovered that Pennington mistakenly represented that the Ocracoke station could be upgraded to a Class C1 facility, the potential investor lost interest in the broadcast business and refused to provide funds to AJI. Findings, ¶13. Thus, despite Inman's efforts to secure an alternative source of financing after the death of Pittman, the apparent conflicting interests and self-dealing conduct of AJI's former FCC counsel resulted in the loss of the licensee's second source of financing.

35. Shortly after Inman lost the South Carolina investor, in the latter part of September, 1995, Pennington told Inman he had until January 31, 1996, either to construct or sell KYEG(FM),

and advised Inman to sell the station. In accordance with his lawyer's advice, Inman entered into an agreement to sell KYEG(FM) to PBI in January, 1996. After obtaining the parties' signatures to the application and a filing fee check from Hughes, Pennington told Inman and Hughes that he had filed the assignment application with the Commission. Findings, ¶14. Nevertheless, nearly two months later, in March, 1996, Inman discovered that Pennington never filed the application with the Commission, but, instead, was demanding an additional payment from PBI before he would file the application. Findings, ¶16. Inman then began searching for another investor, and contacted Dain Schult as well as other potential investors. After "numerous" telephone conversations with Schult, Inman met with Schult in Atlanta in mid-June, 1996. Inman made it clear to Schult during these conversations that the KYEG(FM) license had been designated for hearing, and that there was the possibility that AJI might lose the station. Upon returning to Atlanta in July, Schult (through Texrock) agreed to provide AJI up to \$200,000 for the construction and start-up expenses of Station KYEG(FM). Findings, ¶17.

36. In addition to his efforts to secure financing, Inman hired an engineering firm in June or July, 1995, and made a \$7,000 deposit on a transmitter for KYEG(FM). Findings, ¶10. He also has secured office space in Canadian, Texas, and hired an operations manager. Findings, ¶21. Thus, the record establishes that, upon recovering from his heart problems, with the exception of the brief period of time in which Inman, upon the advice of his former FCC counsel, attempted to sell Station KYEG(FM), Inman acted diligently in attempting to secure the necessary financing and engineering services to return KYEG(FM) to broadcast operation. Although Station KYEG(FM) has not yet resumed broadcast operations, the evidence also establishes that AJI did not permanently discontinue operating the station, but, rather, has made extensive efforts and expended substantial financial

resources in attempting to place the station back on the air. Therefore, the question whether AJI has violated Section 73.1750 of the rules should be resolved in the licensee's favor. See *Cavan Communications*, 10 FCC Rcd 2873 (ALJ 1995); *Video Marketing Network, Inc.*, 10 FCC Rcd 7611 (MMB 1995); *Hometown Media, Inc.*, FCC 96D-06 (ALJ, released September 17, 1996).

C. AJI Violated Section 73.1740 of the Commission's Rules, But the Rule Violations Are Not Disqualifying On the Facts of This Case.

37. Section 73.1740 of the rules prescribes minimum operating schedules for commercial broadcast licensees. Among other things, the rule requires that if a station is going to remain off the air for more than 30 days, the licensee must obtain authorization from the Commission to do so. 47 CFR §73.1740(a)(4). Commission authority to operate for less than the minimum amount required by Section 73.1740 is conferred by a grant of special temporary authority pursuant to Section 73.1635 of the rules. See 47 CFR §73.1635.

38. In *Cavan Communications*, 10 FCC Rcd 2873 (ALJ 1995), the subject station went off the air on March 29, 1991. The Bureau released an Order to Show Cause and Hearing Designation Order, 8 FCC Rcd 8414 (MMB 1993), on November 30, 1993, which specified the same issues which are the subject of this proceeding.¹³ Thus, at the time the issues were designated for hearing, the station had been off the air for two years and eight months.

39. The ALJ found that Cavan Communications ("Cavan") had the capability and intent to expeditiously resume broadcast operations because the station went back on the air on March 18,

¹³ The hearing designation order also directed the Presiding Judge to determine whether, in the event license revocation was not warranted, a forfeiture should be assessed against the licensee pursuant to Section 503(b) of the Communications Act of 1934, as amended. 10 FCC Rcd 2873.

1994, slightly more than three and one-half months after the release of the hearing designation order. 10 FCC Rcd at 2876. The ALJ also resolved the question concerning whether Cavan had violated Section 73.1750 in the licensee's favor because it had taken all the necessary steps to return the station to broadcast operations. *Id.* at 2875-76. However, with respect to whether the licensee violated Section 73.1740 of the rules, the ALJ found that Cavan committed four separate violations of the rule by going off the air without silence authority for two months (on two separate occasions), eight months, and nine months. *Id.* at 2875.

40. In resolving the ultimate issue of whether Cavan's license to operate the station should be revoked, the ALJ held that, despite the repeated violations of Section 73.1740, revocation of the station's license was not warranted.¹⁴ *Id.* at 2876.

41. Similarly, in *Hometown Media, Inc.*, FCC 96D-06 (ALJ, released September 17, 1996), the Bureau, in a license renewal proceeding, issued a Hearing Designation Order, DA 96-813 (released May 22, 1996), which specified issues similar to those in this proceeding.¹⁵ In *Hometown Media*, the subject station went off the air due to financial problems on March 17, 1995. The licensee filed an STA to remain silent, but such authority expired on February 16, 1996, and no further silence authority was requested. *Id.* at ¶¶3-4. At the time the hearing designation order was released on May 22, 1996, the station had been off the air without silence authority for over three months.

¹⁴ The ALJ noted, however, that the violations of Section 73.1740 of the rules were "wholly inexcusable," and imposed a forfeiture against Cavan in the amount of \$1,000. 10 FCC Rcd at 2876.

¹⁵ The only difference was in the third issue, which sought to determine whether the subject license renewal application should be granted, rather than whether Hometown Media was qualified to remain a Commission licensee.

42. In acting upon the licensee's motion for summary decision, the ALJ concluded that Hometown Media had the capability and intent to resume broadcast operations expeditiously. *Id.* at ¶¶11-12. He also found that the licensee did not violate Section 73.1750 of the rules because it never intended to discontinue operations on a permanent basis. *Id.* at ¶13. Although Hometown Media violated Section 73.1740 of the rules, the ALJ concluded:

. . . [T]he evidence indicates that the rule violation was inadvertent and of short duration and not a deliberate flouting of the Commission's Rules. Under the circumstances, the rule violation does not impact adversely upon the licensee's basic qualifications.

Id. at ¶15, citing *Video Marketing Network, Inc.*, 10 FCC Rcd 7611, 8613 (MMB 1995); *Cavan Communications*, 10 FCC Rcd 2873 (ALJ 1995).

43. In this case, Station KYEG(FM) remained off the air without silence authority from April 22, 1995 (the sixtieth day following the February 21, 1995, consummation date) until August 23, 1995, when the Commission granted its July 20, 1995, request to remain silent. Findings, ¶¶3, 5. The station also has remained off the air without silence authority since October 1, 1995, the date its STA expired. Findings, ¶5. Thus, at the time the HDO was released on April 16, 1996, AJI had violated Section 73.1740 of the rules on two separate occasions for periods of approximately four months and six and one-half months. Nevertheless, these rule transgressions are substantially less egregious than the four separate rule violations in *Cavan*, two of which were for longer periods of time (eight and nine months) than either of the violations in this case. Moreover, the fact KYEG(FM) has not yet resumed normal broadcast operations should not have an adverse impact upon AJI's basic qualifications because the two rule violations were inadvertent, of relatively short duration, and, as in *Hometown Media*, do not reflect a "deliberate flouting of the Commission's

rules." Therefore, the rule violations do not warrant revocation of the KYEG(FM) license. *Cavan Communications*, 10 FCC Rcd 2873; *Hometown Media, Inc.*, FCC 96D-06 (ALJ, released September 17, 1996). See also *Video Marketing Network, Inc.*, 10 FCC Rcd 7611 (MMB 1995).¹⁶

44. Furthermore, AJI's violations of Section 73.1740 are mitigated by Inman's efforts to return the station to broadcast operation and the actions of AJI's former FCC counsel. As demonstrated above, following his recovery from heart problems in April, 1995, Inman made extensive and repeated efforts to return KYEG(FM) to on-air operation. In either June or July, 1995, Inman employed an engineering firm to supply the equipment and perform the necessary engineering work to reconstruct Station KYEG(FM). He also made a \$7,000 deposit on a transmitter for the station. Findings, ¶10. In addition, Inman secured financing from his long-time friend and broadcaster, John Pittman, only to have Pittman suddenly pass away in a car accident days before Inman was to have his engineers travel to Canadian to begin reconstructing the station. Findings, ¶¶11-12. Inman then obtained a written agreement from another broadcaster to provide the necessary funds to return KYEG(FM) to broadcast operations, but the investor backed out of the deal as a result of the self-dealing conduct of AJI's former FCC counsel. Findings, ¶13. After Pennington advised Inman that he had until January 31, 1996, to either construct or sell Station KYEG(FM), and recommended that Inman sell KYEG(FM), Inman entered into an agreement to sell the station.

¹⁶ In *Video Marketing Network, Inc.*, 10 FCC Rcd 7611 (1995), the subject station was off the air without silence authority from December, 1989, until it resumed broadcast operations on April 26, 1994. The licensee conceded repeated and/or willful violations of Sections 73.1125 (main studio rule), 73.3514 (content of application), 73.1740 (minimum operating schedule), 73.3526 (public inspection file), 73.3613 (filing of contracts), and 73.3615 (ownership reports) of the FCC's rules from January 1990 through June 1992. Although the Bureau assessed a forfeiture against the licensee in the amount of \$20,000, it granted the licensee's pending renewal application and application to assign the license to a third party.